

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Geographic Partitioning and )  
Spectrum Disaggregation by )  
Commercial Mobile Radio )  
Services Licensees )  
 )  
Implementation of Section 257 )  
of the Communications Act -- )  
Elimination of Market Barriers )

WT Docket 96-148

~~ON Docket 96-113~~

To: The Commission

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

The Rural Cellular Association ("RCA"), in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding issued by the Federal Communications Commission ("Commission") on July 15, 1996, hereby submits its comments on the Commission's proposed change to its existing rules governing geographic partitioning of broadband Personal Communications Services ("PCS") licenses by expanding the class of entities eligible for geographic partitioning. The Commission also proposes that all parties eligible to hold PCS licenses be afforded the opportunity to hold licenses for disaggregated PCS spectrum.

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. RCA submits the Commission will most

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effectively implement its policy goals of ensuring prompt service to rural areas by limiting its proposed expansion of geographic partitioning and disaggregation rights in rural areas to certain rural Commercial Mobile Radio Service ("CMRS")<sup>1</sup> carriers which provide service in the proposed area. In support of its position, RCA shows the following:

## **I. INTRODUCTION**

RCA supports the Commission's efforts to better ensure the efficient utilization of broadband PCS spectrum and the rapid deployment of advanced wireless services. RCA members are committed to the provision of wireless services throughout the rural areas of the nation. This commitment by RCA members is demonstrated by their significant investment in rural infrastructure and the wide area coverage they provide.

RCA fully endorses the Commission's proposals with regard to the non-rural metropolitan areas of the nation. Under existing rules, PCS licensees may make economic decisions to meet build-out requirements by providing coverage in only parts of their licensed areas. The existing rules, however, do not permit any disaggregation of spectrum to any other potential provider, and geographic partitioning is permitted only in areas associated with service provided by a rural telephone company. Clearly, permissible geographic partitioning and spectrum disaggregation to

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<sup>1</sup> RCA proposes that partitioning and disaggregation opportunities be expanded to include rural CMRS providers which interconnect with the public switched network.

any party that otherwise qualifies to hold the PCS license will serve the public interest in non-rural areas by fostering new entrants where the spectrum may otherwise lie fallow.<sup>2</sup>

Similar public interest considerations also support the application of the Commission's proposed rules with modifications in rural areas. Modifications are required, however, in rural areas in order to ensure that aspects of the public interest which are specific to rural areas are not ignored. Both Congress and the Commission have recognized that the public interest is fostered in rural areas by adopting measures that encourage deployment of technology and advanced services in rural areas by carriers that have made a demonstrable investment and commitment to this objective. The existing rules regarding partitioning are reflective of this policy to the extent that they are directed toward achieving rapid deployment of new services in rural areas by existing rural carriers.

The adoption of the Commission's proposed modification of its partitioning rules does not require abandonment of the policy fostering the public interest in rural areas which underlies the existing rule. Accordingly, the RCA offers proposed modifications to the proposed rules which will serve the public interest by ensuring that the promotion of the policy objective of the existing rule is maintained and enhanced.

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<sup>2</sup> NPRM at ¶16.

## **II. EXPANDED PARTITIONING ELIGIBILITY SHOULD BE INITIALLY LIMITED IN RURAL AREAS.**

RCA supports the Commission's position that expansion of the class eligible to hold licenses for partitioned spectrum will speed the deployment of PCS in rural areas, but suggests that the original rationale for the structure of rules remains valid -- service to sparsely-populated rural areas can be provided most promptly by those entities with existing infrastructure in the service area.

The Commission's basic purpose in establishing the original partitioning rules was to promote the rapid introduction of PCS into rural areas.<sup>3</sup> To foster and execute this limited purpose, eligibility for partitioning was confined to rural telephone companies proposing to provide PCS within their general service areas. The Commission noted that "existing infrastructure makes rural telephone companies well suited to introduce PCS services rapidly into their service areas and adjacent areas."<sup>4</sup> This observation is equally applicable to rural CMRS providers.

Accordingly, RCA proposes that the Commission modify its proposed rules to provide for an initial right of refusal by rural CMRS providers as well as rural telephone companies to obtain partitioning or disaggregation in areas included within the rural service areas where they presently provide service. This proposal can be easily implemented and administered by requiring the PCS

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<sup>3</sup> In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fifth Report and Order, 9 FCC Rcd. 5532, 5597-5599 (1994) ("Fifth R&O").

<sup>4</sup> Id. at 5597.

licensee that proposes to assign a portion of its license by partitioning or disaggregation to verify in the application that it has met this obligation.

The inclusion of an initial right of refusal to partitioned and disaggregated spectrum for rural CMRS providers<sup>5</sup> would further the goal of the Commission, as expressed in the NPRM, to "speed service to unserved communities and bring competition to other areas."<sup>6</sup> The Commission has already determined that the public interest is served by rules that encourage rural carriers to provide PCS services in rural areas by making them solely eligible for partitioning.<sup>7</sup> RCA maintains that the same public policy objectives that apply to rural telephone companies apply equally to existing rural CMRS providers. Similar to the rural telephone companies, rural CMRS providers also have in place in rural areas infrastructure upon which a PCS system can be developed rapidly and efficiently.

Although market forces may be the appropriate allocator of resources in urban areas, the distinct characteristics of rural areas, noted by both Congress and the Commission, require continued consideration. There has been no change in facts or circumstances

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<sup>5</sup> RCA proposes that the term "rural CMRS provider" include any CMRS carrier licensed to provide service in any county included within the definition of a Cellular Rural Service Area, as defined by Section 22.909(b) of the Commission's Rules (47 C.F.R. §22.909(b)). Rural CMRS providers should be eligible for partitioning and disaggregation within the counties where they provide CMRS.

<sup>6</sup> NPRM at ¶14.

<sup>7</sup> See, Fifth R&O, paras. 148-153.

subsequent to the adoption of the initial partitioning rules which alters the fundamental conclusion that the Commission's rules should include measures that promote service deployment in rural areas by existing rural carriers. The inclusion of the right of refusal, as proposed by the RCA, will ensure that this policy objective is maintained and properly balanced with the policy objective of promoting competition among competitive new entrants.

**III. EFFICIENT UTILIZATION OF THE SPECTRUM REQUIRES THE ADOPTION OF A FILL-IN POLICY FOR PCS LICENSED AREAS.**

RCA supports the Commission's commitment to rapid and comprehensive deployment of PCS, including the proposal to permit partitioners and partitionees two different build-out options: extending the construction requirements applicable to the original PCS licensee to licensees of partitioned and disaggregated spectrum on a proportionally identical basis; or permitting a substantial service requirement.<sup>8</sup> RCA notes, however, that the utilization of either of these options by initial licensees or partitionees may likely result in unused spectrum and, potentially, underserved areas.

Accordingly, the RCA respectfully submits that the Commission's goals of universally available PCS and efficient spectrum use would be served by application to PCS licensees of a "use or lose" fill-in policy similar to that employed in the cellular arena. Specifically, license renewal applications should

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<sup>8</sup> NPRM at ¶ 32 - 34.

be confined to only those areas already served. Subsequent to the original license period, geographic areas that remain unserved by the initial licensee should be subject to fill-in applications in a manner that is substantially similar to the cellular license Phase 2 process.<sup>9</sup> During the first year that fill-in applications would be accepted for a specific PCS license, the RCA proposes that only an existing rural service carrier<sup>10</sup> providing service within the proposed coverage area should be eligible to apply to provide service in rural service areas. Subsequent to this one year period, when multiple applications propose coverage areas that overlap in a rural service area, no application should be considered mutually exclusive with the application of an existing rural service carrier providing service within the proposed coverage area except that of another rural service carrier. The adoption of this proposal will assist the Commission in achieving two of its previously enunciated objectives:

- 1) promoting the efficient utilization of spectrum; and
- 2) fostering the provision of broadband spectrum services in rural areas by rural service providers.

#### **IV. CONCLUSION**

The Commission's proposals to expand geographic partitioning eligibility and to permit spectrum disaggregation should be adopted with the modifications proposed above. In general, the Commission's proposals will foster the efficient utilization of

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<sup>9</sup> See, 47 C.F.R. § 22.949(b).

<sup>10</sup> I.e., a rural CMRS provider or rural telephone company.

spectrum and the rapid deployment of broadband spectrum services to the public. In adopting these rule revisions, however, the RCA respectfully urges the Commission to maintain within its rules considerations that recognize the market conditions of rural areas and the needs of telecommunications users residing in these areas.

The Commission has previously adopted a policy that promotes the provision of new wireless broadband spectrum services to rural users by existing rural carriers. The adoption of the rule modifications proposed by RCA to provide a right of refusal for rural carriers seeking PCS partitioning and/or spectrum disaggregation and to allow for fill-in applications for PCS service areas will ensure that the Commission can better meet its dual objectives of promoting the efficient utilization of spectrum by competitive service providers and fostering the delivery of broadband PCS services throughout the nation.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

By: Richard Ekstrand (se)  
Richard Ekstrand, Chairman  
Government and Regulatory  
Committee

2120 L Street, N.W.  
Suite 520  
Washington, D.C. 20037  
202/296-8890

August 15, 1995



**CERTIFICATE OF SERVICE**

I, Nicola A. Chenosky, hereby certify that a copy of the foregoing **Comments of the Rural Cellular Association** in CC Docket No. 96-148 was served on this 15th day of August 1996, by first class, U.S. mail, postage prepaid, to the following parties:

  
Nicola A. Chenosky

Chairman Reed Hundt \*  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Commissioner James H. Quello \*  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Commissioner Rachelle Chong \*  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

Commissioner Susan Ness \*  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

Dorothy Conway, Management Analyst \*  
Office of Managing Director  
Federal Communications Commission  
1919 M Street, NW, Room 234  
Washington, DC 20554

International Transcription Services \*  
Federal Communications Commission  
1919 M Street, NW, Room 246  
Washington, DC 20554

Timothy Fain, OMB Desk Officer  
10236 NEOB  
725 - 17th Street, NW  
Washington, DC 20503

\* Via Hand Delivery